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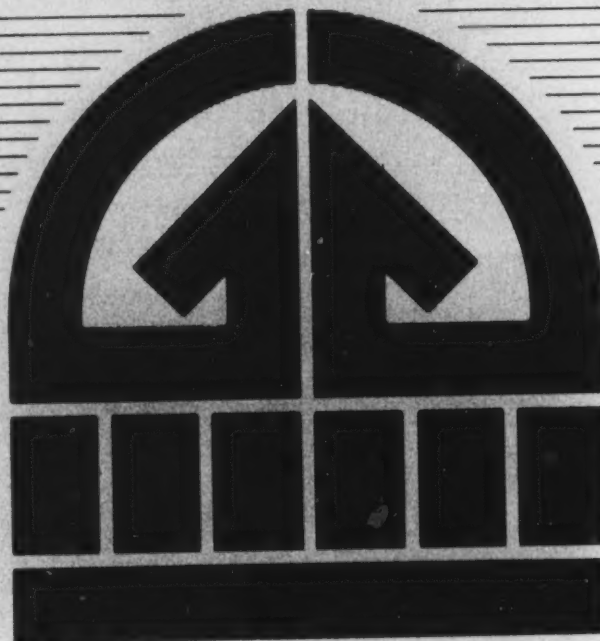
ABSTRACT

The widespread use of asbestos for several decades in building construction has created major public health concerns for state governments. If asbestos is not thoroughly bound in cement, plaster, resin or some other stable material, it will flake and powder, releasing countless microscopic fibers into the air. Asbestos fibers penetrate deep into the respiratory tract and are not readily ejected by the lungs' defense mechanisms. The fibers scar the lung tissues and may cause cancer. This State Legislative Report examines issues confronting states in managing health hazards associated with asbestos materials in buildings. The requirements imposed on states by the 1986 Asbestos Hazard Emergency Response Act (AHERA) are analyzed. Current federal and state responses to managing asbestos are also discussed. The report emphasizes legislative issues in state accreditation of asbestos professionals, which is mandated by federal law. Accreditation programs were required in most states by August, 1988. (CW)

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ASBESTOS IN BUILDINGS: THE STATE ROLE

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ASBESTOS IN BUILDINGS: THE STATE ROLE

This State Legislative Report examines issues confronting states in managing health hazards associated with asbestos materials in buildings. The requirements imposed on states by the 1986 Asbestos Hazard Emergency Response Act (AHERA) will be analyzed. Current federal and state responses to managing asbestos also will be discussed. The report emphasizes legislative issues in state accreditation of asbestos professionals, which is mandated by federal law. Accreditation programs are required in most states by August 1988.

THE HAZARDS OF ASBESTOS AND THE NEED FOR STATE LEGISLATION

The widespread use of asbestos for several decades in building construction has created major public health concerns for state governments. If asbestos is not thoroughly bound in cement, plaster, resin or some other stable material, it will flake and powder, releasing countless microscopic fibers into the air. Asbestos fibers penetrate deep into the respiratory tract and are not readily ejected by the lungs' defense mechanisms. The fibers scar the lung tissues and cause cancer.(1,2)

The long latency of asbestos diseases (10-40 years) impeded recognition of their cause. This latency now hampers safe management of asbestos in buildings, because maintenance workers, contractors and building occupants cannot see directly the risks that accompany exposure to asbestos materials.(1)

State governments have important responsibilities in controlling asbestos hazards in buildings. AHERA requires states to adopt accreditation programs for asbestos professionals. As building owners and managers, states are directly accountable (indeed liable) for identifying and eliminating asbestos hazards in state buildings. States also have obligations to protect the health and welfare of the broader public from unnecessary exposure and endangerment from the 30 million tons of asbestos installed nationally in more than 30,000 schools, 700,000 public and commercial buildings, and uncounted numbers of residences.(5)

Principal actions that states can take to control asbestos hazards include:

- Systematically identifying and managing asbestos (required in schools by AHERA);
- Requiring training and accreditation of asbestos contractors, consultants and workers (required in schools by AHERA);
- Establishing performance standards and procedures for asbestos abatement; and
- Establishing educational programs and disclosure requirements regarding asbestos in school, commercial and residential buildings. Inspection and disclosure of asbestos could be required, for example, at the time of a sale or lease of real property (for example, in some communities, inspection and disclosure of this kind is required for termites).

EVOLUTION OF FEDERAL ASBESTOS LAWS AND REGULATIONS

The U.S. Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) administer the principal federal programs regarding asbestos. EPA standards concern use of asbestos, asbestos emissions outside a building, inspection and management of asbestos in schools, and worker safety for public employees. OSHA standards cover worker safety for private sector employees.

Most uses of asbestos in buildings were banned during the 1970s under the Clean Air Act.(3) Currently, EPA proposes a 10-year phase-out of virtually all asbestos uses under the Toxic Substances Control Act. (Notice of Proposed Rule, Federal Register, January 29, 1986.)

EPA regulations bear on the management of asbestos previously installed in buildings. The National Emissions Standards for Hazardous Air Pollutants (NESHAP) (40 CFR Sec. 60, Subpart M), promulgated under the Clean Air Act, include provisions for notification, standards for wet removal of asbestos during building renovation and demolition, asbestos waste disposal, and prevention of visible emissions outside the building.

OSHA's worker protection requirements for asbestos abatement projects prescribe standards for air monitoring, certain work practices, respiratory protection, protective clothing, hygiene, work area enclosure and cleanup, medical surveillance, worker training, and record keeping (19 CFR Sec. 1926.58). OSHA recently reduced the occupational asbestos exposure limit permissible without respiratory protection from 2.0 fibers/cc to 0.2 fibers/cc. OSHA standards apply only to private sector employees.

EPA also has issued an asbestos worker protection rule (40 CFR Sec. 763.120) for state and local government employees, including maintenance workers in public schools and universities. This rule basically extends to public employees the asbestos worker protection standards set by OSHA for private sector employees.

In 1982, EPA ordered the inspection of primary and secondary school buildings for friable asbestos (40 CFR Part 763). All friable material was to be sampled and analyzed, and if the material contained at least 1 percent asbestos, school employees and the local PTA were to be notified. School districts were ordered to comply with the rule by June 28, 1983. Compliance was not good, however, and school districts often were distressed by the rule because it set no standards for evaluating asbestos hazards or abating them. Schools were confused by the inspection process and lacked guidance regarding the adequacy of inspections. Congress responded with the Asbestos Hazard Emergency Response Act of 1986 (AHERA).

ASBESTOS HAZARD EMERGENCY RESPONSE ACT OF 1986 (AHERA)

AHERA requires states and local education authorities (LEAs) to take certain steps to remedy the hazards of asbestos in schools. While the 1982 Asbestos in Schools Rule did not require response actions, AHERA does. The objective of AHERA is to require identification and necessary response actions regarding asbestos in the nation's schools.

AHERA requires schools to inspect for asbestos, develop a management plan detailing the chosen method of management, submit the plans to an agency designated by the governor, and implement the plans in a timely fashion. AHERA requires states to adopt accreditation plans for asbestos professionals at least as stringent as the EPA Model Accreditation Plan. States also must designate an agency to receive the school management plans. The state may reject a management plan that is defective.

IMPLICATIONS FOR THE STATES

AHERA will have a significant impact on the states. It raises a number of state legislative issues, including necessary authorization for accreditation, funding for asbestos programs, enforcement, assistance to schools and the scope of state asbestos programs as they relate to buildings other than schools.

AHERA requires states to adopt an accreditation plan at least as stringent as the EPA Model Plan within 180 days after the beginning of their next legislative session following the effective date of EPA's Model Plan (December 14, 1987). For most states, the deadline is July or August 1988. The EPA Model Plan requires specific training for inspectors, management planners, asbestos abatement designers, abatement contractors, supervisors and workers. State plans also must include requirements for refresher training on an annual basis, examinations and decertification. As of February 1988, 39 states had adopted some form of state accreditation requirements for asbestos professionals. Of these states, only a few appear to fully meet the requirements of the model plan.(4)

The AHERA deadlines will require the states to move quickly to adopt an accreditation plan. Asbestos professionals who wish to work in a state that does not meet the Model Plan will have to seek accreditation from another state that has an EPA-approved plan or from the EPA. The time constraints are serious factors, considering AHERA's requirement that all public schools be inspected by accredited persons and submit management plans prepared by accredited persons before October 17, 1988. Only a few states now accredit asbestos inspectors and management planners. Once states adopt an accreditation plan, there will be large numbers of people seeking accreditation quickly.

As discussed above, AHERA and the Model Plan mandate specific requirements, but also leave much to the states' discretion. The Model Plan specifies minimum accreditation requirements, but states must decide whether it is necessary to go beyond the Model Plan to satisfy their individual needs. States may consider provisions that supplement or go beyond the Model Plan. These areas include examinations, decertification and enforcement, pre-qualifications and reciprocity.

The model allows states to administer their own training programs and examinations or delegate the authority to private entities. States must weigh the resources to administer state training programs and exams against the risk that delegation of these duties may impair the effectiveness of state accreditation.

The Model Plan requires decertification, but does not outline a decertification program. Training alone does not ensure continued competence. States must establish a suitable decertification and enforcement program to

ensure not only adequate training, but continued proper performance. Procedures and standards for denial, revocation, suspension and renewal of certificates and licensing must be established by the state.

The Model Plan suggests that states consider requiring pre-qualifications for asbestos professionals, but leaves the specifics entirely to the states. EPA recommends that states consider requiring abatement designers and management planners to be industrial hygienists or registered architects or engineers. EPA recommends that states consider requiring inspectors to possess a high school diploma or associate's degree in a particular field. States also may consider a more flexible approach by allowing experience to substitute for education (Massachusetts approach).(4) Persons trained by EPA-approved courses are not required to possess any pre-qualifications.

The Model Plan and AHERA recommend reciprocity in state accreditation, but do not address the specifics. Each state should be aware of other state activities relating to AHERA so that states may provide for meaningful reciprocity. A common approach being taken by states is to accept accreditation for those persons who have received training from another training course (EPA- or state-approved) that is substantially equivalent to the training required within that state. An additional state course covering state regulations and/or a state examination also may be required. This approach ensures that persons working in the state are, in fact, properly trained and provides the state with its own enforcement mechanism. Reciprocity has advantages for states because it provides for a larger pool of qualified persons, helps reduce asbestos management costs by increasing competition among contractors, and alleviates part of the administrative burden associated with accreditation.

AHERA creates significant responsibilities for schools and states, but provides little funding; however, fee-based funding mechanisms are being implemented that allow a state to establish a successful program without heavy reliance on general fund money (Nebraska, Oklahoma, Oregon).(4)

The AHERA requirement that schools submit management plans to the states by October 12, 1988, will be taxing on the states' resources. States must be prepared to receive a plethora of plans and review these plans within 90 days of submission to determine if they are adequate.

The pressure placed on schools also will be felt by the states. The state will need to respond in some instances to schools' requests for financing to comply with AHERA since Congress provided minimal funding for AHERA activities. Public concern about activities within the schools also will be felt at the state level.

Although AHERA only applies to schools, its requirements and the activities of schools already are prompting asbestos management in other buildings and concern among the general public about asbestos exposure and safety. Thirty-six states currently have some form of asbestos abatement standards that cover buildings other than schools.(6) Kansas reported that in the last year only 19 percent of the total asbestos projects that were subject to state regulation involved schools. States must consider the extent and scope of their own asbestos regulatory program and whether it is necessary to go beyond AHERA to protect public health and safety. The EPA, pursuant to AHERA, recently

released a study of asbestos in buildings other than schools and recommendations to Congress regarding their findings.(6) As building owners and managers, states also must consider asbestos management practices for state buildings patterned after those required for school buildings under federal law.

This State Legislative Report is part of a larger NCSL project on asbestos which is supported by a grant from the U.S. Environmental Protection Agency EPA. The project has included a national conference on asbestos held in November 1987, a survey of state asbestos programs that was published in February 1988, and technical assistance to state legislatures.

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